

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:

District of Columbia Water and Sewer Authority,

Complainant,

v.

American Federation of Government Employees,
Local 872,

Respondent.

PERB Case No. 05-U-10

Opinion No. 949

DECISION AND ORDER

I. Statement of the Case:

The District of Columbia Water and Sewer Authority ("Complainant") or ("WASA"), filed an unfair labor practice complaint against the American Federation of Government Employees, Local 872 ("Union" or "Respondent" or "Local 872"), alleging that Local 872 violated D.C. Code § 1-617.04(b) (1) and (3) (2001 ed.) by failing to pay arbitration fees for those cases that it lost, effectively canceling the grievance resolution process in the parties' collective bargaining agreement ("CBA").¹ Subsequently, the Complainant filed an Amended Complaint and Motion for Preliminary Relief ("Amended Complaint"). The Complainant requested that the Board order: (1) the Respondent to cease and desist from failing to bargain; (2) the Respondent to pay its share of all outstanding arbitration costs; and (3) a make whole remedy.

¹ The complaint was captioned "Unfair Labor Practice Complaint and Motion for Preliminary Relief". On July 29, 2005, the Board denied WASA's Motion for Preliminary Relief in Slip Op. No. 801 and referred the Respondent's Motion to Dismiss to the Hearing Examiner.

The Respondent filed an Answer and Affirmative Defenses to the Amended Unfair Labor Practice Complaint ("Answer") denying the allegations. The Respondent also filed a Motion to Dismiss the Unfair Labor Practice Complaint. ("Motion to Dismiss"). The Complainant filed an Opposition to the Respondent's Motion to Dismiss and the Respondent filed a Reply to the Opposition to the motion. Subsequently, the Respondent filed a Motion for Decision on the Pleadings and an Unopposed Motion to Postpone the Hearing. The Complainant filed an Opposition to the Motion for Decision on the Pleadings.²

A hearing was held in this matter. In his Report and Recommendation ("R&R"), the Hearing Examiner found that the Respondent violated the Comprehensive Merit Personnel Act ("CMPA"). The Respondent filed Exceptions to the Hearing Examiner's R&R and the Complainant filed an Opposition to the Respondent's Exceptions.

The Hearing Examiner's R&R, the Respondent's Exceptions, and the Complainant's Opposition are before the Board for disposition.

II. Motion to Dismiss

The Respondent filed a Motion to Dismiss asserting that the Board lacks jurisdiction to hear WASA's claim because it is strictly contractual in nature, alleging a violation of the parties' CBA and not an unfair labor practice. (See R&R at p. 9). Furthermore, the Respondent argued that there was no refusal to bargain because there was no demand by the Complainant. (R&R at p. 9).

The Hearing Examiner addressed the Respondent's Motion to Dismiss finding that WASA's claim is strictly contractual in nature, not an unfair labor practice. Citing *American Federation of Government Employees, Local 872, AFL-CIO v. District of Columbia Water and Sewer Authority*, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1996) the Hearing Examiner noted that "[i]n general, claims alleging a violation of the parties' collective bargaining agreement are not unfair labor practice s under the CMPA." (R&R at p. 10). The Board further stated as follows:

While some state and local laws make the breach of a collective bargaining agreement [i.e., contract] by employer or union an unfair labor practice, the CMPA contains no such provision, nor do we find such a necessary connection implicit in the Act. [Carlease Madison Forbes v. Teamsters Joint Council 55 , 36 DCR 7097, Slip Op. No. 205 at p. 3, PERB Case No. 87-U-11 (1989).]

² In Slip Op. No. 801, the Board denied a Motion for Preliminary Relief. In Slip Op. No. 807, the Board granted a Motion for a Continuation. In Slip Op. No. 813, the Board denied a Motion for Decision on the Pleadings and referred the Respondent's Motion to Dismiss to the Hearing Examiner.

* * *

However, we have held that a party's refusal to implement a viable collective bargaining agreement is an unfair labor practice. See, Teamsters Local-Union No. 639 and 730, IBTCHWA v. D.C. Public Schools, Slip Op. No. 400, PERB Case No. 93-U-29 (1994).³ In Teamsters, the Board observed that "[i]f an employer has entirely failed to implement the terms of a negotiated or arbitrated agreement, such conduct constitutes a repudiation of the collective bargaining process and a violation of the duty to bargain." *Id.* at p. 7. We find this same reasoning equally applicable to a negotiated settlement agreement. We find, similarly, that when a party simply refuses or fails to implement an award or negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA. (pgs. 2-3).

(R&R at p. 10).

Relying on the Board's decision in the AFGE, Local 872 v. WASA case, above, the Hearing Examiner stated that "[t]he Board's precedent . . . establishes that it is an unfair labor practice and a repudiation of a contract to refuse or to fail: to implement a collective bargaining agreement; to implement a settlement agreement; to implement an award or a negotiated agreement. Furthermore, the Board's precedent establishes that, in the case of a negotiated agreement where there is no dispute over the terms, as in the instant claim, the refusal or failure to implement a negotiated agreement constitutes a failure to bargain in good faith. Therefore, provided the [Complainant] can prove its claims, the Respondent's failure to pay arbitrator's fees, under the 'loser pays' provisions of the CBA Articles 58 and 59, is an unfair labor practice under the Act and within the Board's jurisdiction". (emphasis added). (R&R at p. 11). In light of the above, the Hearing Examiner recommended the denial of the Motion to Dismiss. (See R&R at p. 11).

No exceptions were filed on the denial of this motion. Nevertheless, the Board has reviewed the Hearing Examiner's findings. The Board has previously found that the failure to implement a negotiated or arbitrated agreement, such conduct constitutes a repudiation of the collective bargaining process and a violation of the duty to bargain." See, Teamsters Local-Union No. 639 and 730, IBTCHWA v. D.C. Public Schools, Slip Op. No. 400 at p. 7, PERB Case No. 93-U-29 (1994). Therefore, the Board finds reasonable the Hearing Examiner's conclusion that, "provided the [Complainant] can prove its claims, the Respondent's failure to pay arbitrator's fees, under the 'loser pays' provisions of the CBA . . . is an unfair labor practice

³ [footnote omitted].

under the Act and within the Board's jurisdiction." (R&R at p. 11). Thus, we find no basis for dismissing the complaint.

III. Motion for Summary Judgment

At the hearing, the Respondent moved for dismissal of the Complainant's claim on the grounds that the complainant had not proved its case. The Hearing Examiner accepted the motion as a Motion for Summary Judgment. In support of the motion, the Respondent claimed that WASA failed to prove the material facts alleged in the complaint.

The Hearing Examiner noted that WASA, as the Complainant, bears the burden of proof in this proceeding. The Respondent, as the moving party making this motion, can prevail on the motion by showing that the Complainant has no reasonable expectation of proving an essential element of its case. The Hearing Examiner viewed the evidence "in the light most favorable to the Complainant, as the summary judgment process requires . . . and found that the Respondent has admitted essential elements of the charge that AFGE, Local 872 unilaterally failed to pay several arbitrator's bills. [He also found that] the Respondent's National Union has admitted that AFGE, Local 872 owed AFGE approximately \$80,000.00 causing AFGE to take the extraordinary step of arranging with WASA for Local 872's dues to go directly to the National Union." (R&R at p. 11).

We adopt the Hearing Examiner's findings that the Respondent has admitted material facts alleged in the complaint, are reasonable and based on the record. Thus, the Respondent has not shown that the Complainant has no reasonable expectation of proving an essential element of its case; we thereby agree with the Hearing Examiner's conclusion that the motion should be denied.

IV. Hearing Examiner's Report

Local 872 is the exclusive representative of WASA employees in the bargaining unit certified by the Board.⁴ The president of the Union at the time relevant to this case was

⁴ The Board certified the following unit in Certification No. 95, PERB Case No. 96-UM-07 (1997):

All non-professional employees employed by the District of Columbia Water and Sewer Authority, Bureau of Water Measurement and Billing, Meter Measurement and Credit and Collection Division; and all employees of the Bureau of Water Services, Distribution Division, but excluding all management officials, confidential employees, supervisors, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

The Board certified the following unit in Certification No. 95, 96-UM-07 (1999):

Christopher Hawthorne. The dispute between the Complainant and the Respondent arises out of Articles 58 and 59 of the parties' collective bargaining agreement ("CBA" or "Agreement"). Article 58 establishes a grievance and arbitration procedure allowing employees and the union to file grievances. Article 59 establishes an additional expedited grievance and arbitration procedure which requires that the fee and expenses of the arbitrator "shall be borne by the losing party". (R&R at p. 3). "The complainant's Amended complaint asserts that the Respondent violated D.C. Code § 1-617.04(b)(1) and (3) when it failed to pay arbitrator's fees pursuant to the parties' CBA Articles 58 and 59." (R&R at p. 12).

The grievance/arbitration procedure in the CBA provides that the losing party must pay the arbitrator's fee and expenses. Several arbitrators have informed WASA that they are owed money by the Union. As a result, some arbitrators have cancelled pending arbitrations. In view of the above, the complainant alleges that numerous arbitrators, as well as the entire panel designated to hear expedited grievances under Article 59, Expedited Arbitrations, have been compromised by Respondent's repeated failure to pay the arbitration expenses. (Amended Complaint at p. 5).

The Complainant alleges that beginning in June 2004 it was notified that the Union had not paid outstanding bills to arbitrators. Between August and November 2004 and January 2005, WASA claims that it received letters from arbitrators and the Federal Mediation and Conciliation Service (FMCS) giving notice of non-payment by the Union. The Complainant argues that the Union's actions have resulted in the inability of the parties to resolve grievances related to discipline and discharge in violation of D.C. Code § 1-617.04(b)(1)(3). (Amended Complaint at p. 6). For example, one arbitrator refused to schedule any arbitrations for fear of giving the appearance of a conflict of interest. Also, the Complainant alleges that at least two employees have been denied access to the negotiated grievance/arbitration procedure in violation of D.C. Code § 1-617.04(b)(1). (Amended Complaint at p. 5). However, the Respondent denies that there are any outstanding arbitration bills.⁵

All District Service (DS) and Wage Grade (WG) employees employed by the D.C. Water and Sewer Authority in the Water Quality Division; excluding management officials, supervisors, confidential employees, employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

There is currently in place a collective bargaining agreement dated October 2001 bearing the following title: "Master Agreement on Compensation and Working Conditions Between American Federation of Government Employees Local (AFGE), Locals 631, 872, 2553 . . ." dated October 2001.

⁵ On June 29, 2004, the Federal Mediation and Conciliation Service ("FMCS") "sent a letter to Christopher Hawthorne, Local 872 former President, stating that "the Union had not fulfilled its financial obligation to WASA-AFGE, Local 872 arbitration panel member Arbitrator Kathleen Jones Spilker, under the Parties' 'loser pays' requirement in CBA Articles 58 and 59." (R&R at p. 4). On October 28, 2004, Arbitrator Spilker wrote to Russell Binion, AFGE National

WASA claimed that AFGE, Local 872's nonpayment of arbitrator's fees impacted the CBA grievance procedure by being disruptive to the process, confusing the Arbitrators and causing cancellations of arbitration hearings. (R&R at p. 5). Stephen Cook, the Complainant's Labor Relations Manager testified that "[the] process was violated because of their refusal to pay those Arbitrators who [were] on the Expedited [Panel and] tainted the whole process. . ." (R&R at p. 5). As a result of this situation, WASA informed Local 872 that it was suspending Article 59 which provides for expedited arbitrations and brought the matter to the National Union. (See R&R at p. 5). WASA also held in escrow the biweekly dues withholding that would normally be paid to Local 872, while determining what to do about Local 872's failure to pay Arbitrators pursuant to the CBA. (See R&R at p. 4). WASA subsequently sent the AFGE National Union all of Local 872's dues held in escrow as well as the subsequent biweekly dues. (See R&R at p. 4).

WASA argued before the Hearing Examiner that the issue "is not whether WASA demanded to bargain or when WASA bargained [taking the position that] there was no requirement to bargain". (R&R at p. 7). Nor is the fact that the arbitrators were paid at a later time the issue. Rather, WASA maintained that the only issue is "whether AFGE, Local 872 committed a[n unfair labor practice] when it did not comply with the CBA." (R&R at p. 7). WASA relied on Board precedent which establishes that, "where no dispute exists over the terms of a negotiated agreement a party who fails or simply refuses to implement [the agreement, commits] a failure to bargain in good faith and thereby, an unfair labor practice under the CMAA." (R&R at p. 7).

Jonathan Shanks, President of AFGE, Local 872 at the time of the hearing, testified that he became president after the previous president, Christopher Hawthorne, was suspended in January 2006 "regarding a lack of paying arbitrators. [He stated that] in 2003, AFGE, Local 872 owed so much money [that] the AFGE National 'set it up with . . . [Hawthorne] . . . for the dues money to start going to' [directly to National AFGE, Mr. Shanks further testified that] AFGE,

Vice President about her unpaid bills due from Local 872. Ultimately, Arbitrator Spilker canceled a hearing because of outstanding bills owed to her by AFGE, Local 872. Similarly, Arbitrators Leon B. Applewhaite, Ken Moffet, Paul Fasser and Jonathan E. Kaufman were not paid by AFGE, Local 872 for arbitration services provided to the parties. "Kaufman declined 'to move forward' with arbitration assignments because Local 872's failure to pay his bills created a conflict of interest." (R&R at p. 4).

Additionally, Sandra Williams, AFGE Special Assistant to the National President, National Secretary-Treasurer's Office, testified that AFGE, Local 872 also became very delinquent regarding money owed the National AFGE by Local 872. Consequently, she was asked to conduct an audit of AFGE, Local 872's records [and t]he audit established that Local 872 owed National AFGE approximately \$80,000.00. She testified that because of this balance owed, AFGE arranged with WASA for "the dues checks to come directly to the National, instead of to the local and the National paid the arbitrators' bill owed by AFGE, Local 872." (R&R at p. 6).

Local 872 never intentionally failed to pay arbitrators, but it 'just didn't have the funds to pay them,' and all the arbitrators had been paid now." (R&R at p. 6).

The Hearing Examiner stated that *AFGE v. WASA*, [Slip Op. No. 497 at p. 2, PERB Case No. 96-U-23 (1996)], "establishes that when a party simply refuses or fails to implement a negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and an unfair labor practice under the Act. [He noted that] [t]he Board has long held that such conduct constitutes a repudiation of the collective bargaining process and the express terms of the agreements, and is a violation of the duty to bargain." (R&R at p. 12).

Thus, the Hearing Examiner found that "when the AFGE, Local 872 failed to shoulder its burden in numerous arbitration cases involving substantial amounts of money, it denied WASA and the bargaining unit employees it represents the benefits of Articles 58 and 59. [These] actions constituted a repudiation of the collective bargaining process and the collective bargaining agreement in violation of the Act at [D.C. Code] § 1-617.04(b)(1)." (R&R at p. 13).

Furthermore, the Hearing Examiner found that "AFGE, Local 872's refusal and failure to pay arbitrators' fees as provided in Articles 58 and 59 also constituted a unilateral change in the conditions of employment without bargaining which were expressly provided for in the [p]arties' collective bargaining agreement. In this regard and based on Board precedent discussed above, AFGE, Local 872's actions constitute a violation of the Act at [D.C. Code] § 1-617.04(b)(3). AFGE, Local 872's defense, that WASA did not demand to bargain, is simply without merit because its actions, standing alone, constituted both a unilateral change in conditions of employment expressly stated in the agreement and a repudiation of the agreement." (R&R at p. 13)." (R&R at p. 13).

V. Exceptions

In its Exceptions, the Respondent cited *District Council 20, AFSCME, Local 1200, et al. v. District of Columbia Government, et al.*, 46 DCR 6513, Slip Op. No. 590 at p.3, PERB Case No. 97-U-15A (1999) for the proposition that "an employer's [or union's] failure to implement or comply with CBA . . . provisions arising from a refusal or failure to recognize its bargaining obligation constitute a repudiation of the collective bargaining process and thereby a violation of the duty to bargain in good faith." (Exceptions at p. 2). The Respondent maintains that this means that where a party asserts that it has no obligation to bargain under the CMPA or maintains that it is not bound by a previously bargained collective bargaining agreement, that party has repudiated the CBA. The Respondent claims that its actions do not meet the Board's legal standard for repudiation.

The Respondent contends that "a violation of the duty to bargain may exist even without an express request to bargain when a party makes 'pervasive unilateral changes in an effective agreement' that are 'precipitated by a fundamental rejection of the bargaining relationship'. The

Respondent maintains, however, that "without evidence of a rejection of the parties' bargaining relationship or of pervasive unilateral changes there must first be an initial request to bargain in order for a subsequent 'refusal to bargain in good faith' [complaint] to be sustained. See *Fraternal Order of Police/Dep't of Corrections Labor Committee v. D.C. Dep't of Corrections*, 49 DCR 8937, Slip Op. No. 679, PERB Cases Nos. 00-U-36 and 00-U-40 (2002) (affirming the hearing examiner's conclusion that a request to bargain was necessary in the absence of repudiation or pervasive unilateral changes). . . ." (Exceptions at p. 3). The Respondent claims that its actions do not meet the Board's legal standard for repudiation.

The Respondent takes exception to the Hearing Examiner's conclusion that Local 872 repudiated the collective bargaining agreement ("CBA") by failing to pay arbitration fees pursuant to Article 59, and claims that this conclusion is not supported by substantial evidence. Specifically, the Respondent claims that the following facts contradict this conclusion: (1) Local 872 did, in fact, pay all of the arbitration fees that it owed, albeit late; (2) Local 872 did not pay the arbitration fees promptly because it was financially unable to do so, in part as a result of WASA's unilateral refusal to remit dues withholding payments to either Local 872 or AFGE National during the pendency of this case; and (3) the Union and WASA engaged in bargaining over working conditions, including the grievance arbitration process contained in Article 59 of the CBA, at the same time that WASA pursued this case. (See Exceptions at pgs. 5-6).

Furthermore, the Respondent maintains that the Hearing Examiner's conclusion that Local 872 unilaterally changed a condition of employment covered by the CBA is not supported by substantial evidence because: (1) the evidence shows that the Respondent engaged in bargaining with WASA during the life of this case and did not intentionally fail or refuse to pay the arbitration fees; and (2) while Local 872 may have been temporarily delinquent in making its arbitration payments, it is undisputed that it was WASA who unilaterally cancelled by letter the Article 59 grievance arbitration procedure and never made a request to bargain relevant to this case. (See Exceptions at p. 6).

The Board has considered the Respondent's arguments and finds that the Hearing Examiner fully considered and rejected these arguments in reaching his conclusions of law. As a result, the Respondents' exception amounts to a disagreement with the Hearing Examiner's findings. We believe the Respondent is merely disagreeing with the Hearing Examiner's findings that the Respondent's failure to process grievances constitutes a failure to bargain in good faith. The Board has held that a mere disagreement with the Hearing Examiner's findings is insufficient to set aside the Hearing Examiner's findings when the record supports his findings, such as here. See *Fraternal Order of Police/Department of Corrections Labor Committee and D.C. Department of Corrections*, 49 DCR 8937, Slip Op. No. 679 at p. 16, PERB Case No. 00-U-36 and 00-U-40 (2002); *Glendale Hoggard v. District of Columbia Public Schools*, 46 DCR 4837, Slip Op. No. 496, PERB Case No. 95-U-20 (1996). Furthermore, this Board will not turn aside the findings of the Hearing Examiner where they are reasonable and supported by the record, as here. In light of the above, we find that the Respondents' exceptions lack merit.

In this case, the unfair labor practice resulted when AFGE, Local 872 failed to process grievances through the expedited procedure contained in the parties' negotiated agreement. The Board notes that the right to process grievances lies at the core of collective bargaining. While we are cognizant of the internal financial problems of Local 872, this does not relieve the local of the responsibility to abide by the negotiated agreement and thus bargain in good faith with the Complainant. Nor does the fact that the arbitrators have now been paid, negate the fact the failure to process grievances for two years deprived employees of the opportunity to pursue their grievances.

We have previously found that an agency's violation of the duty to bargain in good faith under D.C. Code§ 1-617.04(a)(5), results in interference of employee rights and also constitutes a violation of D.C. Code§ 1-617.04(a)(1). Similarly, we find that AFGE, Local 872's failure to process grievances is a violation of the duty to bargain in good faith with the Complainant in violation of D.C. Code§ 1-617.04(b)(3) and results in interference of employee rights under D.C. Code§ 1-617.04(b)(1).

VI. Costs

The Complainant requested that reasonable costs be awarded. D.C. Code § 1-618.13(d) provides that "[t]he Board shall have the authority to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as the Board may determine." In *AFSCME, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue*, 73 D.C. Reg. 5658, Slip Op. No. 245 at pgs. 4-5, PERB Case No. 98-U-02 (2000). The Board addressed the criteria for determining whether a party should be awarded costs. The Board noted the following:

First, any such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are "reasonable" that may be ordered reimbursed. . . . Last, and this is the [crux] of the matter, we believe such an award must be shown to be in the interest of justice.

Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively catalogued. . . . What we can say here is that among the situations in which such an award is appropriate are those in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonable foreseeable result of the successfully challenged conduct is the

undermining of the union among the employees for whom it is the exclusive representative. (emphasis added).

In the present case, the Complainant did not prevail. Therefore, there is no basis for awarding costs under the interest of justice criteria. In light of this, there are no grounds upon which we may grant AFGE, Local 872 costs in this case.

Accordingly, we find the Hearing Examiner's findings to be reasonable, based on the record and consistent with Board precedent.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 872, it agents and representatives shall cease and desist from refusing to bargain in good faith with the District in violation of D.C. Code § 1-617.04(b)(3).
2. The American Federation of Government Employees, Local 872, it agents and representatives shall cease and desist from interfering restraining, or coercing employees in the exercise of their rights guaranteed by D.C. Code § 1-617.04(b)(1).
3. The American Federation of Government Employees, Local 872, shall post conspicuously within ten (10) days from the service of this Decision and Order, the attached Notice, admitting the above noted violations where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.
4. The American Federation of Government Employees, Local 872, its agents and representatives shall notify the Public Employee Relations Board ("the Board"), in writing, within fourteen (14) days from the date of this Decision and Order that the Notice has been posted accordingly.
5. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 30, 2009

NOTICE

TO ALL BARGAINING UNIT MEMBERS OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 872, (EMPLOYED BY THE D.C. WATER AND SEWER AUTHORITY), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 949, PERB CASE NO. 05-U-10 (September 30, 2009).

WE HEREBY NOTIFY our employees employed by D.C. Water and Sewer Authority that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(b) (1) and (3) by the actions and conduct set forth in Slip Opinion No. 949.

WE WILL cease and desist from refusing to bargain in good faith with the District of Columbia Water and Sewer Authority, by refusing to bargain in good faith with the District in violation of D.C. Code § 1-617.04(b)(3).

WE WILL cease and desist from interfering restraining, or coercing employees in the exercise of their rights guaranteed by D.C. Code § 1-617.04(b)(1).

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by Subchapter XVII Labor-Management Relations, of the District of Columbia Comprehensive Merit Personnel Act.

American Federation of Government Employees, Local 872

Date: _____ By: _____
President

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 717 - 14th Street, N.W., Suite 1150, Washington, D.C. 20005. Telephone: (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 30, 2009

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 05-U-10 was transmitted via Fax and U.S. Mail to the following parties on this the 30th day of September 2009.

Stephen Cook
Labor Relations Manager
D.C. Water and Sewer Authority
5000 Overlook, Avenue, S.W.
3rd Floor
Washington, D.C. 20032

FAX & U.S. MAIL

Andres M. Grajales, Esq.
Staff Attorney
AFGE, Nat'l General Counsel's Office
80 F Street, N.W.
Washington, D.C. 20001

FAX & U.S. MAIL

Mendelssohn McClean, Esq.
Labor Relations Manager
D.C. Water and Sewer Authority
5000 Overlook, Avenue, S.W.
3rd Floor
Washington, D.C. 20032

FAX & U.S. MAIL

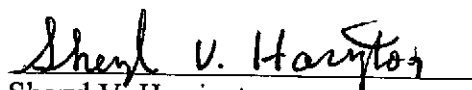
Robert Ames, Esq.
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601

FAX & U.S. MAIL

Courtesy Copy:

Sean Rogers, Esq.
20555 September Point Lane
P.O. Box 1327
Leonardtown, MD 20650

U.S. MAIL


Sheryl V. Harrington
Secretary